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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RON AZARKMAN,

Plaintiff and Appellant,

v.

NOORA NICCA, LLC et al.,

Defendants and Respondents.

B214291

(Los Angeles County
Super. Ct. No. LC080717)

APPEAL from a judgment of the Superior Court of Los Angeles County.
James A. Kaddo, Judge. Reversed.

Schwartz Law Group, Matthew H. Schwartz and Elizabeth Van Horn for Plaintiff
and Appellant.

Law Offices of Ehsan Afaghi, Ehsan Afaghi and Firouzeh Simab for Defendants
and Respondents.

Ron Azarkman appeals from the judgment dismissing his complaint for fraudulent conveyance, conspiracy and an accounting after the court sustained defendants' demurrers without leave to amend. We reverse.

FACTS AND PROCEEDINGS BELOW

We discuss the allegations in Azarkman's first amended complaint in more detail below. In summary, Azarkman alleges that he obtained a judgment on March 27, 2007, against Noora Nicca, LLC (Noora) in the amount of \$85,000 plus interest, costs and attorney fees. A few weeks prior to the entry of this judgment Noora transferred its sole asset, improved commercial real estate, to Houshang and Frangis Khodadadeh (Khodadadeh) a married couple. Azarkman further alleges that Noora and the Khodadadehs entered into this transfer with the intent to hinder, delay or defraud Azarkman in his effort to collect on his judgment against Noora in the underlying action. Finally, Azarkman alleges that Noora made the transfer to the Khodadadehs without receiving a reasonably equivalent value in exchange and that Noora was insolvent at the time of the transfer or became insolvent as a result of the transfer.

Azarkman brought this action against Noora and the Khodadadehs for fraudulent conveyance, conspiracy and an accounting. The trial court sustained defendants' demurrers to the original complaint with leave to amend. After Azarkman filed an amended complaint, the defendants again demurred. This time the court sustained the demurrers without leave to amend and dismissed the action. Azarkman filed a timely appeal.¹

¹ There is no merit to defendants' claim that by not challenging the sustaining of the demurrer to the original complaint, Azarkman has forfeited his right to challenge the sustaining of the demurrer to the amended complaint.

DISCUSSION

I. CAUSE OF ACTION FOR FRAUDULENT CONVEYANCE

California has adopted the Uniform Fraudulent Transfer Act (Civ. Code §§ 3439-3439.12).² The purpose of the Act is “to prevent debtors from placing property which legitimately should be available for the satisfaction of demands of creditors beyond their reach” (*Chichester v. Mason* (1941) 43 Cal.App.2d 577, 584.) A fraudulent transfer or conveyance under the Act may be intentional (§ 3439.04, subd. (a)(1)) or constructive (§§ 3439.04, subd. (a)(2), 3439.05).

An intentional fraudulent conveyance “is a transfer by the debtor of property to a third person undertaken with the intent to prevent a creditor from reaching that interest to satisfy its claim.” (*Yaesu Electronics Corp. v. Tamura* (1994) 28 Cal.App.4th 8, 13.)

A constructive fraudulent conveyance has two forms. Section 3439.04, subdivision (b), “provides that a transfer is fraudulent if the debtor did not receive reasonably equivalent consideration and either ‘(1) Was engaged or about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or [¶] (2) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.’” Section 3439.05 “provides that a transfer is fraudulent as to an existing creditor if the debtor does not receive reasonably equivalent value *and* ‘was insolvent at that time or . . . became insolvent as a result of the transfer’” (*Mejia v. Reed* (2003) 31 Cal.4th 657, 669-670.)

Azarkman alleges a fraudulent conveyance on both intentional and constructive theories.

A. Theory Of An Intentionally Fraudulent Conveyance

Section 3439.04, subdivision (a), states in relevant part: “A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor’s claim

² All statutory references are to the Civil Code.

arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation [¶] (1) With actual intent to hinder, delay, or defraud any creditor of the debtor.” Thus, the elements of a cause of action for an intentionally fraudulent conveyance are that the judgment debtor transferred property to a third person with the intent to hinder, delay or defraud the plaintiff in his collection of his judgment. In pleading an intentionally fraudulent conveyance it is not necessary to allege the conveyance, if allowed to stand, would result in harm to the plaintiff; the conveyance is void. (*Benson v. Harriman* (1921) 55 Cal.App. 483, 485.)

Section 3439.04, subdivision (b) describes certain indicia or “badges” of fraud (*Filip v. Bucurenciu* (2005) 129 Cal.App.4th 825, 834) that may be considered in determining actual intent to defraud under subdivision (a)(1). These include: “(1) Whether the transfer . . . was to an insider. [¶] . . . [¶] (4) Whether before the transfer was made . . . the debtor had been sued or threatened with suit. [¶] . . . [¶] (8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred [¶] . . . [¶] (10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.”

Azarkman’s first amended complaint sufficiently pleads a cause of action for an intentionally fraudulent conveyance. It alleges that at the time Azarkman filed the underlying action against Noora, Noora owned real property in Los Angeles County, referred to as the “Keswick property.” Approximately three weeks before Azarkman obtained a judgment against Noora in the underlying action, Noora transferred the Keswick property to the Khodadadehs without obtaining a reasonably equivalent value in exchange. At the time of the transfer, Houshang Khodadadeh was a managing member of Noora and in that capacity he executed the grant deed transferring the Keswick property from Noora to himself and his wife, Frangis Khodadadeh. Azarkman further alleges that this transfer “was made with an actual intent (on the part of all parties to that transfer) to hinder, delay and/or defraud all of [d]efendant Noora’s then and future creditors, including [p]laintiff Azarkman, in the collection of his claim and judgment.”

B. Theory Of A Constructively Fraudulent Conveyance

Section 3439.05 states: “A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.” Thus, the elements of a cause of action for a constructively fraudulent conveyance are that the judgment debtor transferred property to a third person after the creditor’s claim arose; the judgment debtor did not receive a reasonably equivalent value in exchange for the transfer; the debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer or obligation; and that the plaintiff suffered harm as a result of the transfer. (*Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75, 82 [constructively fraudulent transfer requires proof of harm to plaintiff-creditor].)

Azarkman’s first amended complaint sufficiently pleads a cause of action for a constructively fraudulent conveyance. It repeats the allegations regarding an intentional fraudulent conveyance, described above, and adds allegations that “as a result of [d]efendant Noora conveying the [p]roperty to [the Khodadadehs] [d]efendant Noora thereby rendered itself insolvent or was already insolvent at the time of the transfer in that the sum of Noora’s debts was greater than all of its assets and/or Noora was not paying its debts as they became due” and that “[a]s a proximate result of the wrongful acts herein alleged, [p]laintiff has been generally damaged in an amount to be proven at trial, but in no event in an amount less than \$85,000.”

II. CAUSE OF ACTION FOR CONSPIRACY

“Conspiracy” is not a cause of action. It is a legal doctrine that imposes liability on persons who, although not committing a tort themselves, share the tortfeasors common plan or design. (*Filip v. Bucurenciu, supra*, 129 Cal.App.4th at p. 837.) Conspiracy can arise from a fraudulent conveyance claim and impose liability on persons who, although not actually committing the tort themselves, share with the immediate tortfeasor a

common plan or design in its perpetration. (*Ibid.*) Insofar as a complaint charges a third party with conspiracy, the question is whether the complaint alleges facts which, if proved, would make that third party liable as a joint tortfeasor with the other defendant for the underlying tort. Thus, the elements which must be alleged are “(1) the formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct.” (*Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1581.) (The latter element need only be alleged if the plaintiff is seeking damages from the co-conspirators. See discussion, *ante.*)

Azarkman’s first amended complaint sufficiently pleads a conspiracy between Noora and the Khodadadehs to commit an intentional fraudulent conveyance. It repeats the allegations regarding an intentional fraudulent conveyance, described above, and adds the allegation that approximately three weeks before the judgment against Noora, Noora and the Khodadadehs “agreed, and knowingly and willfully conspired among themselves to hinder, delay and/or defraud [p]laintiff in the collection of his claim and the enforcement of [p]laintiff’s judgment against [Noora].” The complaint further alleges Noora and the Khodadadehs “agreed to a sham transfer of the [p]roperty for no value whatsoever, or for a value that was not nearly the equivalent of the [p]roperty.” Finally, the complaint alleges that as a “proximate result of the wrongful acts herein alleged, [p]laintiff has been generally damaged in an amount to be proven at trial, but in no event in an amount less than \$92,687.97.”

The trial court should treat the allegations in the “cause of action” for conspiracy as additional allegations in the cause of action for fraudulent conveyance.

III. CAUSE OF ACTION FOR ACCOUNTING

Azarkman’s fourth cause of action is against the Khodadadehs for an accounting. It alleges on information and belief that between March 12, 2007 and the date of filing the complaint, the Khodadadehs “have collected and received rents and profits from tenants in possession of the [p]roperty, or profits from the sale of the [p]roperty. Any such proceeds are subject to [p]laintiff’s claims alleged herein.”

In *Michal v. Adair* (1944) 66 Cal.App.2d 382, 388, the court held that “rentals from property fraudulently conveyed by the debtor . . . were subject to the claims of a defrauded creditor.” Although neither party has cited a case directly on point, “equity is handmaid to the law” and therefore we see no reason why Azarkman should not be entitled to an accounting in aid of his recovery of the proceeds from the fraudulently conveyed property.

DISPOSITION

The judgment is reversed. Appellant is awarded his costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.